

# HOUSE . . . . . No. 1130

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## The Commonwealth of Massachusetts

PRESENTED BY:

**Jennifer Benson**

*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act relative to a wastewater management district in the town of Harvard.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Jennifer Benson	37th Middlesex
James B. Eldridge	Middlesex and Worcester

# The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

An Act relative to a wastewater management district in the town of Harvard.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

SECTION 1. The purpose of this act is to ensure and facilitate the connection of buildings and structures located in the Harvard Wastewater Management Service Area to the common wastewater management system to be constructed and installed therein; reduce and prevent contamination and pollution of drinking water, groundwater and other natural resources in said service area; provide for an efficient and financially self-sustaining wastewater management system in said areas; facilitate the implementation of Title V of the State Environmental Code in order to protect and improve groundwater supplying drinking water; protect persons residing in said service area from the risks and hazards associated with such contamination and pollution, all to the public benefit and good, and to the extent and manner provided herein.

SECTION 2. As used in this act, the following words shall, unless the context requires otherwise, have the following meanings:

“Board of Health”, the Board of Health of the Town of Harvard.

“Commission” the Harvard Wastewater Management District Commission of the Town established by Section 4 of this Act.

“Costs”, all costs and expenses of the planning, design, acquisition, construction, installation, reconstruction, alteration, extension, improvement or enlargement of the wastewater management system including, without limitation, costs of labor, materials, professional services, consulting services, equipment, grinder and ejector pumps, materials, supplies, machinery, structures, all rights in real and personal property, costs of demolitions or relocations, costs of removal or relocations of public utilities, financing charges and expenses, debt service costs relative to the wastewater management system.

22 “Facility”, shall mean a facility as defined in 310 CMR 15.002 of the State Environmental  
23 Code as of May 1, 2009.

24 “Revenues”, all revenues, rates, fees, charges, rents, proceeds of loans, grant funds, insurance  
25 proceeds, investment earnings and other receipts derived from the operation of the wastewater  
26 management system.

27 “Harvard Wastewater Management Service Area”, shall mean that portion of the Town of  
28 Harvard shown on a plan entitled “Proposed Sewer Service Plan, Town of Harvard, Mass.  
29 prepared for Town of Harvard”, dated 11/19/2008 and revised on 3/30/2009 prepared by Norfolk  
30 Ram in Association with Weston & Sampson and filed in the office of the Town Clerk of the  
31 Town or as such service area may be modified by majority vote of the Town at a town meeting,  
32 upon the recommendation of the Commission.

33 “Town”, the Town of Harvard.

34 “Wastewater management system”, the wastewater collection, conveyance, treatment and  
35 disposal systems serving more than one facility to be constructed or to be in the possession of  
36 and under the jurisdiction and control of the Commission, including all components thereof.

37 “Wastewater”, greywater and blackwater from domestic, municipal and other governmental  
38 and institutional uses, but not from industrial sources, as defined in 310 CMR 15.002 of the  
39 State Environmental Code.

40 SECTION 3. There is hereby established in the Town of Harvard a commission to be known as  
41 the Harvard Wastewater Management District Commission, which shall have the rights, powers  
42 and duties specified in this Act and the General Laws relating to town boards, and shall be  
43 subject to such instructions as the Town may from time to time impose by vote of its town  
44 meeting.

45 Except as otherwise provided in this Act, said commission shall consist of three members,  
46 each of whom shall be a resident of the Town. At least one such member shall reside in the  
47 Harvard Wastewater Management Service Area. The members shall be appointed by the Board  
48 of Selectmen of the Town within sixty days after the effective date of this Act, provided that the  
49 design of the wastewater management system to be constructed in said service area has been  
50 approved by vote of the Town at a town meeting. Of the members first appointed, one shall serve  
51 in office for a term expiring on June thirtieth in the year following the effective date of this Act,  
52 and one for a term expiring on June thirtieth in the second year following the effective date of  
53 this Act, and one for a term expiring on June thirtieth in the third year following the effective  
54 date of this Act. Thereafter, said board of selectmen shall appoint successors for a term of three  
55 years, or in the case of an appointment to fill a vacancy, for the unexpired term, and until the  
56 successor is appointed and qualified. Any member of said commission shall be eligible for  
57 reappointment. Any member of said commission may be removed at any time for cause. No

vacancy in the membership of said commission shall impair the right of a quorum to exercise the powers of said commission. Two members of said commission shall constitute a quorum and the affirmative vote of two members shall be necessary for any action taken by vote of said commission.

Said commission shall annually elect one of its members as chair. The members shall serve without compensation. The members of said commission shall not be municipal employees within the meaning of Chapter 268A of the General Laws.

The Commission shall have all the rights, authority and powers necessary or convenient to carry out and effectuate this Act, including, but without limiting the generality of the foregoing, the rights, authority and power to:

(a) to hire, employ or engage the services of engineers, land surveyors, consultants and such other experts as it deems necessary and determine their duties;

(b) to construct, install, improve, extend, enlarge, operate, maintain, repair and reconstruct the wastewater management system, subject to the limitations set forth in Section 10 of this Act;

(c) to hold, manage, maintain, control and regulate the use of Town-owned property, real or personal, tangible or intangible, or interests therein, for the purposes of this Act, consistent with all requirements of the General Laws;

(d) to adopt rules and regulations relative to the use of and connection to the wastewater management system including the types of wastewater that can be discharged into the system, subject to the approval of the Board of Selectmen. The Commission may, by regulation, prescribe civil penalties, which shall enure to the Town, in accordance with Section 10 of Chapter 83 of the General Laws for the violation of any such rule or regulation of the Commission. Prior to adopting or amending such rules and regulations, the Commission shall hold a public hearing thereon, notice of which, giving the time, date and place, shall be placed in a newspaper of general circulation in the town, once in each of two successive weeks, with the first such publication being not less than fourteen (14) days before the hearing. Any such rules and regulations so adopted or amended and so approved shall be filed in the office of the Town Clerk whereupon they shall take effect. The Commission may also assess fines not exceeding three hundred dollars for each violation of its rules and regulations in accordance with Section 21 of Chapter 40 of the General Laws;

(e) to apply for, receive, accept, administer, expend and comply with the conditions of any grant, gift, loan, donation, or appropriation of any money or property in aid of the purposes of this Act;

(f) to sell, exchange, transfer or otherwise dispose of any surplus personal property, tangible or intangible, consistent with all requirements of the General Laws;

(g) to contract for and procure wastewater management, treatment and disposal from any person, private or public corporation or government agency or entity, consistent with all requirements of the General laws, when necessary or convenient for the operation of the wastewater management system;

(h) to use and expend monies borrowed or appropriated by the Town for the purposes of this Act;

(i) to make contracts of every name and nature and to execute and deliver all instruments necessary or convenient for carrying out its duties;

(j) to create an overall wastewater management policy and plan for the Harvard Wastewater Management Service Area, which shall be consistent with the Town's Master Plan and Open Space and Recreation Plan;

(k) to fix, revise, charge, collect and abate fees, rates, assessments, delinquency charges and other charges for wastewater collection, treatment and disposal services, facilities and commodities for facilities connected to the wastewater management system;

(i) Subject to Section 5 of this Act, such fees, rates, rents, assessments, delinquency charges and other charges of general application shall be adopted and revised by the Commission at least annually in accordance with procedures to be established by the Commission for assuring that interested persons are afforded notice and an opportunity to present data, views and arguments. The commission shall hold at least one public hearing on its schedule of fees, rates and charges or any revision thereof prior to adoption, notice of which shall be delivered to the Board of Selectmen of the Town and be published in a newspaper of substantial circulation in the Town at least one month in advance of the hearing. No later than the date of such publication, the Commission shall make available to the public and deliver to said selectmen and the Finance Committee of the Town the proposed schedule of fees, rates and charges and its proposed operating and capital budgets for its next fiscal year. The commission may combine its fees, rates and other charges for wastewater services provided by it in a single schedule of charges. Fees, rates, rents, assessments, abatements and other charges established by the Commission shall not be subject to supervision or regulation by any department, division, commission, board, bureau, or agency of the Commonwealth. Such schedule shall provide for the metering, monitoring and other measuring of, and charging for, wastewater management services provided by the commission to consumers of such services in said service area, except for the Town, provided, further, that no betterment or special assessment shall be made by the Commission under the authority of Chapters 80 or 83 of the General Laws or any other provision of law against property owned by the Town, the Commonwealth, any political subdivisions thereof or the United States or any agencies thereof. In lieu of any betterment assessment or special assessment, the Town shall receive a reduction in any outstanding General Fund advances or loans or make payment or transfer from the General Fund equal to the amount such assessment.

(ii) Subject to Section 5 of this Act, the fees, rates, rents, assessments and other charges so established by the Commission shall be so fixed and adjusted in respect to the aggregate thereof so as to provide revenues at least sufficient (1) to pay the current expenses of the Commission, (2) to pay the principal of, premium, if any, and interest on bonds or other evidences of indebtedness issued by the Town for the Commission as the same become due and payable, (3) to create and maintain such reasonable reserves as may be reasonably required by any trust agreement or resolution securing bonds, (4) to provide funds for paying the cost of all necessary repairs, replacements and renewals of the wastewater management system and (5) to pay or provide for any amounts which the Commission may be obligated to pay or provide for by law or contract including any resolution or contract with or for the benefit of the holders of bonds issued for the Commission. The annual operating budget of the Commission shall be submitted to the Board of Selectmen and Finance Committee of the Town for review and recommendation, and all funds expended by the Commission shall be subject to appropriation by town meeting.

(l) to exercise the powers and privileges of, and to be subject to limitations upon towns and cities provided by the provisions of Sections 1 to 24, inclusive, and 27 to 29, inclusive, of Chapter 83 of the General Laws, insofar as such provisions may be applicable and are consistent with the provisions of this Act;

(m) to do all things necessary, convenient or desirable for carrying out the purposes of this Act or the powers expressly granted or necessarily implied in this Act; and

(n) consistent with the Constitution and laws of the Commonwealth, the Commission shall have such other powers as may be necessary for or incident to carrying out the foregoing powers and the accomplishment of the purposes of this Act; provided, however, that nothing in this Act shall impose any duty on the Commission to maintain groundwater levels within or without the boundaries of the Town.

SECTION 4. The Town is hereby authorized to establish an Enterprise Fund in accordance with the provisions of Section 53F1\2 of Chapter 44 of the General Laws for the operation of the wastewater management system. On or before one year after the effective date of this act and annually thereafter, the Commission shall prepare a proposed capital improvement program for the next three succeeding fiscal years of said commission and shall adopt an operating and capital improvement budget for the next succeeding fiscal year. Such program and budgets shall include a description of the operations and projects proposed to be undertaken during such periods, the costs proposed to be incurred in connection with such operations and projects, the method of financing such costs and an estimate of the effect, if any, that such costs will have on the current or projected fees, rates, assessments and other charges of the Commission. The program and budget shall be annually prepared and the budget shall be presented for approval to the town meeting. The commission shall submit its operating capital budget to the Board of Selectmen and Finance Committee of the Town for review and recommendation. The Commission shall hold at least one public hearing on the proposed capital improvement program

and budget and operating budget prior to adoption, which hearing may be combined with a hearing provided in Section 4, Paragraph(i) of this Act, notice of which shall be delivered to said board of selectmen and be published in a newspaper of substantial circulation in the Town at least one month in advance of the hearing. No later than the date of such publication, the Commission shall make available to the public and deliver to said board of selectmen copies of the proposed program and budgets.

SECTION 5. The Town may incur debt for development of the wastewater management system in accordance with Chapter 44 of the General Laws. Notwithstanding any provision of Section 17 of Chapter 44 of the General Laws to the contrary, the Town may make temporary loans for a period of not more than five years in anticipation of the money to be derived from the sale of bonds for the construction and installation of the wastewater management system in said service area. The principal of, premium, if any, and interest on all notes and bonds issued by the Town for the Commission, unless otherwise provided by the Town, shall be payable solely from the funds provided therefore from revenues as herein provided, but shall be general obligations of the Town for payment of which the full faith and credit of said Town shall be pledged.

SECTION 6. The Commission shall have the benefit, without further acceptance of Sections 16A and 16B of said Chapter 83, to the extent applicable and consistent with this Act. Applications for abatements in accordance with Section 16E of said Chapter 83 shall be made to the Commission within thirty days after the date of such demand. Upon written application, the collector of taxes for the Town shall issue lien certificates in accordance with Section 23 of Chapter 60 of the General Laws. No recordation of certificates issued by the Town pursuant to said Section 23 of said Chapter 60 shall affect liens for the unpaid fees, rates, rents, assessments, and other charges of the Commission.

SECTION 7. Notwithstanding any provision of Section 13 of Chapter 80 of the General Laws to the contrary, (a) the Board of Assessors of the Town may apportion all betterment assessments or unpaid balances thereof relative to the wastewater management system in said service area into equal portions of up to thirty to be paid annually for a period of up to thirty years after such assessments first appear on the affected landowner's real estate tax bill; and (b) betterment assessments made by the Commission shall, at the election of the Commission, bear interest at one rate of up to five per cent per annum or, at a rate of up to two per cent above the rate of interest chargeable to the Town for the betterment project to which the assessments relate, from the thirtieth day after betterment assessments have been committed to the Town Collector.

SECTION 8. The Commission shall have the benefit, without further acceptance of Section 13B of said Chapter 80 and Section 16G of said Chapter 83.

SECTION 9. (a) Notwithstanding the provisions of Section 3 of Chapter 83 of the General Laws, said commission shall not be required to connect any home, facility or lot to the wastewater management system, except as set forth in Paragraph (b) below. The Commission

shall not permit the connection of (i) a new facility; (ii) a facility that has been reconstructed resulting in an increase of the gross floor area or in the number of bedrooms; or (iii) a facility that has undergone a change in use to the wastewater management system or permit an increase in design flow into the wastewater management system for a facility in existence on May 1, 2009, if that new or changed facility could not have been constructed with a wastewater disposal system or septic system which would comply with Title V of the State Environmental Code or other applicable regulations of the Massachusetts Department of Environmental Protection or the increase in design flow could not have been permitted in the absence of a connection to the wastewater management system, unless the Commission, with the approval of the Board of Selectmen, determines that such a connection is necessary for the health, welfare or safety of the Town or creates a demonstrable benefit to the Town.

(b) Any facility within the Harvard Wastewater Management Service Area which is served by a subsurface sewage disposal system which is in a state of failure as determined by the Board of Health or the Massachusetts Department of Environmental Protection shall be connected to the wastewater management system within six months after the owner of the facility receives written notice from the Commission that the wastewater management system is complete and operational.

(c) Any owner of a facility who is aggrieved by a decision of the Commission relative to such owner's application to voluntarily or involuntarily connect such owner's facility to the wastewater management system may appeal the Commission's decision to the Board of Selectmen by filing a written petition with the Board of Selectmen within sixty (60) days after receipt of the Commission's written decision. The Board of Selectmen may hold a hearing on the petition, consult with the Board of Health, and shall render a written decision thereon affirming, modifying or reversing the Commission's decision within ninety (90) days after receipt of the petition or such longer period of time as may be agreed to by the Board of Selectmen and the petitioner. If the Board of Selectmen fails to act on such a petition within said period of time, the Commission's decision shall be deemed to be affirmed.

SECTION 10. Insofar as the provisions of this Act are inconsistent with the provisions of any general or special law, administrative order or regulation, or by-law, rule, regulation or code of the Town, other than rules and regulations or orders of the Board of Health or by-laws of the Town which require homes or facilities to be connected to the wastewater management system involuntarily, the provisions of this Act shall be controlling.

SECTION 11. This Act, being necessary for the health and welfare of the Town of Harvard and its inhabitants, shall be liberally construed to effectuate its purposes. This Act shall be construed in all respects so as to meet all constitutional requirements. In carrying out the purposes and provisions of this Act, all steps shall be taken which are necessary to meet constitutional requirements whether or not such steps are required by statute.



SECTION 12. This Act shall take effect upon its passage.